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COMMITTEE AGAINST TORTURE

Twenty-eighth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 507th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 1 May 2002, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.507/Add.1.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Fourth periodic report of Sweden (CAT/C/55/Add.3) (continued)

1. At the invitation of the Chairman, the delegation of Sweden took places at the Committee table.

2. Mr. EHRENKRONA (Sweden), replying to the questions put by members of the Committee, said that he would first consider the general issue of the enforcement of expulsion orders and then police violence, police training and questions relating to individual cases.

3. With regard to the criticisms voiced in the Swedish media regarding the enforcement of orders of expulsion to Ghana and other countries, he pointed out that they related more to the ethical and legal aspects of the system than to the risk that the expelled alien could be exposed to torture or ill-treatment. His Government was not aware of any cases of aliens deported to Ghana being exposed to such treatment or to capital punishment.

4. The Swedish Embassy in Lagos, which was also responsible for Ghana, had investigated the issue and submitted a report in January 2002 which had established that the main problem in such cases was confusion about the real identity and country of origin of the aliens concerned. According to case law in Sweden, the authorities could not enforce expulsion orders unless it was clear to which country the alien could be returned. Expulsions to Ghana were conducted in cooperation with the Swedish honorary consul in that country, a former minister and prominent barrister, who had assisted the Swedish authorities in clarifying the origin of aliens believed to be of Ghanaian origin and in dealing with the Ghanaian authorities.

5. The Ghanaian authorities had been willing to receive aliens who were unable to prove that they were citizens of Ghana, if it was probable that they were citizens of another country in the Economic Community of West African States (ECOWAS). Citizens of ECOWAS member States could travel and reside freely in other member States for up to 90 days without permission. According to the honorary consul, who handled some 25 to 30 such cases per year, 8 of which originated from Sweden, all aliens who had proved to be non-Ghanaians had been repatriated to their country of origin in West Africa which, in most cases, had been Nigeria.

6. He also gave an account of one, more complex, case involving an alien suspected of being of Ghanaian origin but claiming citizenship of other countries, who had wished to stay in Ghana but had fallen foul of the authorities in that country.

7. Although the Swedish prosecution authorities monitoring the conduct of expulsion orders had found no reason to take action, his Government had decided, in view of the public debate on the issue, to appoint a special commission to study existing legislation and case law on the enforcement of expulsion decisions and to submit proposals for amendments of the law if necessary. Under Swedish law, an expulsion order was considered to be enforced when the alien

had left Swedish territory and been received in the country to which he or she had been expelled. Problems sometimes arose at the receiving end and the alien concerned had to be returned to Sweden.

8. With reference to the concerns raised by some members that only a very few policemen had been notified of suspicion of misconduct following the riots in Gothenburg, despite the large number of complaints recorded, he pointed out that preliminary investigations relating to alleged police misconduct were still pending and an official Committee had been set up to propose measures relating to police action on such occasions and protecting the right of people to demonstrate. The Committee would present its findings by 31 December 2002 and his delegation thought that it would be premature to draw any conclusions relating to police action in Gothenburg since it did not wish to prejudge the outcome of the Committee's work.

9. With regard to the concern expressed about possible shortcomings in the training of policemen and prison guards with reference, in particular, to the death of an attempted escapee from prison - Mr. Jonas Hultén - while being apprehended by prison guards, he explained that the education and training programme for prison guards was determined by the Prison and Administration Service and that the guard charged with Mr. Hultén's death had completed the obligatory training. The shortcoming referred to by the court dealing with the case related to an additional voluntary training course, which was not deemed essential for prison guards by the Prison and Administration Service.

10. In response to the question regarding legal safeguards to ensure that confessions extorted through torture were not invoked in the courts, he explained that, under the principle of free evaluation of evidence in Swedish criminal law, any circumstances or proof might be invoked in criminal proceedings but that, if a confession was shown to have been extorted through torture, it would have no legal value.

11. One Committee member had sought clarification of the changes in the rules for seizing suspects that had been made since Sweden's third report in 1996. He explained that the revised rules were contained in a handbook on appropriate methods for the use of force in controlling violent individuals, elaborated by the Swedish Police Academy in 1998, and described the general rules in the handbook requiring the police to be mentally prepared for violent situations; to keep such situations under continuous assessment and to use the minimum necessary force; and to try to establish normal relations with persons against whom force was being used. The handbook had been approved by the Swedish national board for forensic medicine and would be continuously developed and updated.

12. With regard to the Osmo Vallo case and the opinion expressed by one member of the Committee that, in cases involving the death of a person being arrested, the investigation should be conducted by a totally independent and impartial authority outside the police, he said that an official parliamentary committee had been established to evaluate supervision activities within the police and the public prosecution service and to decide whether the legal framework and administration of cases involving alleged misconduct of the police or public prosecutors was sufficient. The committee would present its conclusions by 28 June 2002.

13. Turning to the question regarding the rule of proportionality in police training, he assured the Committee that all police training included the principle that conflicts were to be resolved with a minimum use of force and that all police officers received practical training in determining the kind of force which was proportionate and justifiable in any given situation.

14. With regard to the protection of bystanders, he referred to provisions in the Police Act on the right of the police to take action during public demonstrations, according the police the right to remove or apprehend persons creating disturbances or about to commit crimes, and explained that police officers had to use their own judgement in exercising that right.

15. Responding to the question about circumstances justifying the use of firearms and tear gas by the police, he cited specific provisions of Swedish law according members of the police force the right to use firearms to prevent serious violence or the threat of such violence against themselves or others or to effect the immediate capture of escaped detainees suspected of serious crimes, such as murder or rape. Other circumstances in which firearms could be used were very limited. In addition, the rules on the carrying and use of firearms by the police had been tightened and police officers had to undergo annual checks of their skills in handling firearms. Lastly, whenever the police was forced to use firearms, a subsequent investigation was held to determine whether or not such use had been justified.

16. There were more general provisions relating to the use of tear gas, which was permitted only if milder forms of control were deemed insufficient. Particular caution had to be exercised in using tear gas if there were elderly people, children or people with health conditions in the vicinity who might be affected.

17. In response to the question whether Sweden's failure to incorporate in its domestic legislation the Convention definition of torture posed any problems, such as in compiling statistics regarding cases of torture, he reiterated the statement in the report that all acts of torture, including the attempted commission of and complicity in such acts, as defined in article 1 of the Convention, were offences under Swedish criminal law and that existing Swedish legislation was therefore in full accordance with its obligations under article 4 of the Convention.

18. His Government believed that the Convention placed no obligation on a State party to incorporate the Convention, but merely required it to ensure that its national legislation was in conformity with its Convention obligations. At the time of Sweden's ratification of the Convention, the authorities had concluded that no changes were required to existing Swedish criminal law. Subsequently, in January 2000, the Parliamentary Standing Committee on Justice had reviewed the situation and had decided that the Convention did not require any change to the country's criminal legislation. That decision notwithstanding, the Commission set up to consider how international crimes were dealt with by Swedish criminal legislation would also consider the crime of torture and, in its report in October 2002, might include proposals on amendments relating to the crime of torture.

19. While statistics on cases of torture, as defined in article 4, could be established in principle, torture was not used as a method of interrogation in Sweden and there was therefore no need for such statistics.

20. Regarding the issue of the obligation to prosecute, he said that, in the Swedish system, there was an absolute obligation to prosecute when there was sufficient evidence and the prosecutor, accordingly, had no discretionary powers in that regard.

21. In response to the request for additional information on cases involving aliens which had security aspects and on the effective remedies in such cases, he cited the two relevant laws under Swedish legislation: the Act on Special Control of Aliens of 1991 and the general Aliens Act. The former applied when the expulsion of aliens was necessary for public security or where there was a risk of the alien committing or being involved in offences involving violence and threats for political purposes. Outlining the procedures for the application of the Act, he explained that it was subject to the same rules impeding enforcement as the Aliens Act, namely, that the law could not be enforced where there were substantial reasons to believe that a deported alien might suffer capital or corporal punishment or be subjected to torture or other cruel, inhuman or degrading treatment or punishment. The Act, which was subsidiary to the Aliens Act and applied to aliens who had not been refused entry or expelled under the Aliens Act, was rarely applied.

22. Ordinary cases involving aliens applying for resident permits in Sweden could also have security aspects, in which event the Migration Board or the Aliens Appeals Board, as appropriate, referred the case to the Government for decision, attaching its own opinion in the matter. The previously mentioned impediments to enforcement applied in those cases also.

23. The fact that the Government was the ultimate arbitrator under both procedures posed a problem with regard to the effective remedy criterion found in various international human rights instruments. While the Convention against Torture did not appear to include such a requirement, the problem did arise when applying the European Convention on Human Rights and would be addressed in the new Aliens Act that was soon to be submitted to the Swedish Parliament.

24. There were no provisions in Swedish law for reopening cases in response to rulings by international courts or United Nations treaty bodies. However, the Aliens Act (chap. 2, sect. 5 (b)) provided that aliens could be granted a residence permit by decision of the Aliens Appeals Board even after an expulsion order had been issued, provided that new circumstances warranted a review; and a request for interim measures by the Committee had been ruled, after the Kisoki case of 1996, to constitute such new circumstances. All asylum applicants with a well-founded fear of capital punishment or torture or other ill-treatment upon return to their home countries had in fact been granted permanent residence permits under chapter 3 of the Aliens Act, which referred specifically to article 3 of the Convention; and, in practice, no expulsions had been carried out in cases where the Committee had indicated a violation of article 3 of the Convention.

25. Rulings by the European Court of Human Rights under article 3 of the European Convention on Human Rights would probably be dealt with in the same way, although none has thus far been rendered on the more than 100 applications filed against Sweden under that article. The proposed revision of the Aliens Act would enable the immigration authorities, in granting asylum, to invoke directly a decision by international organs. Nevertheless, no Swedish

authority was bound by law to grant asylum pursuant to the Committee's views on a case. Indeed, since the immigration authorities were independent, the Government itself could not interfere with their assessment in a particular case.

26. Assessments of the situation in a country by the Office of the United Nations High Commissioner for Refugees (UNHCR) and its Handbook on Procedures and Criteria for Determining Refugee Status were basic tools in Swedish refugee policy; and UNHCR recommendations on individual asylum cases were taken carefully into account in each decision, although they had no legal status. When Swedish immigration authorities did not act according to a UNHCR assessment, the decision generally turned on the probability of risk upon return.

27. The introduction of interim measures requested by the Committee would not generally result in the detention of the asylum-seeker concerned. The Aliens Act was applied strictly, and it provided for the issuance of a detention order only where there was reason to believe the person would try to escape or engage in criminal activities in Sweden, and where less severe measures were not sufficient. There were also strict time limits, and there was a possibility to appeal.

28. There were seven centres in six cities for the rehabilitation of the victims of torture, five of which were run by the Swedish Red Cross and funded partly by it and partly by the county council concerned. Some centres also received funding from the United Nations Voluntary Fund for Victims of Torture. The county councils ensured the necessary medical assistance in their areas, and the Government reimbursed the cost of emergency care of asylum-seekers and foreign nationals and the long-term rehabilitation of torture victims.

29. Language tests were indeed used in expulsion cases to establish identity and national origin, although the Migration Board was aware that they were very imprecise instruments, especially where African languages and dialects were concerned. The Aliens Appeals Board also used them prudently and never as the sole factor in reaching its conclusions.

30. Regarding the evaluation of evidence in expulsion cases, the burden of proof of risk upon return rested, of course, on the alien seeking asylum, but the person concerned had to show only probability of risk, not a reasonable certainty as in court proceedings, and the principle of the benefit of the doubt prevailed, as stipulated in the UNHCR Handbook. Exhaustive or complete evidence was not required, and presumably reliable information provided by the asylum-seeker was accepted. Investigators were well aware of the reluctance of rape or torture victims to provide evidence, but they too had to make their assertions credible, often by supplying medical certificates testifying to physical and mental health.

31. The principle of unrestricted evaluation of evidence applied, in the sense that there were no rules about the admission of certain kinds of evidence. Relevance was the only consideration. However, in the case, for instance, of apparently valid medical certificates submitted as evidence but which contradicted the objective facts or other statements of the aliens concerned, the investigators had to use their judgement about admitting such evidence.

32. With regard to the recent instance in which Sweden had expelled two aliens on the strength of assurances by the Government of their home country that they would not be tortured

upon their return, Sweden had continued to monitor their treatment. The Swedish Ambassador in the country concerned had to date made four separate visits to the prison in which they were being held, and had met them in the presence of prison authorities but in a relaxed atmosphere. He had been able to ask questions and discuss matters and had received no complaints of ill-treatment or torture. The prisoners' main concern was the uncertainty of their trial date, although defence attorneys had already been appointed.

33. Following allegations in 2001 of a few cases of ill-treatment of conscripts in the Swedish National Defence Forces, the Armed Forces Headquarters had asked all Swedish regiments to report by September 2001 on any such instances and on measures taken to prevent them. Those reports had indicated that the occurrence of cruel or degrading punishment had been discussed by conscripts in meetings with their heads of unit, and that several units had established plans of action to prevent any such punishment. It had been made Government policy to hold such discussions regularly within military units and schools and to establish such plans of action. There would be inspections to see that it had been done and to follow-up on the application of the disciplinary system. Military schools and the National Defence College would also expand their teaching of proper military discipline.

34. The CHAIRMAN thanked the delegation of Sweden for its very precise answers to the Committee's questions.

The public part of the meeting rose at 4 p.m.